

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3588 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANCHHODBHAI KANJIBHAI PATEL & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR SK JHAVERI for Petitioners

MS PS PARMAR for Respondent No.1, 2 & 3

None present for Respondent No.4 & 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/06/97

ORAL JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioners, civil servants of the State of Gujarat, employed as Junior Pharmacists in the Employees' State Insurance Scheme under the Director of Medical Services ("ESIS" for short), Gujarat State, Ahmedabad,

have challenged by this Special Civil Application, annexure 'A', Resolution of the Government dated 3rd August 1981, to the extent where they have been deprived of the seniority in the cadre of Junior Pharmacist.

#. The facts, in brief, of the case are that the respondents No.3 to 6 were appointed as Junior Pharmacists under the same Directorate under which the petitioners are working and they have been impleaded in this petition in representative capacity. Challenge has been made by the petitioners, in this Special Civil Application to the final seniority list published by the Department on 20th August 1982 on the basis of criteria laid down under the aforesaid Resolution and as such these persons have been impleaded as a party to this petition. The petitioners were recruited initially as Compounders under the Director of Medical Services in the ESIS in the year 1964-65 whereas respondents No.3 to 6 have been recruited during 1974 to 1981, except respondent No.3 who has been recruited in the year 1964, but after all the petitioners. The petitioners claim that they are senior to respondents No.3 to 6 in Junior Pharmacists cadre on the principle of their seniority should have been on the basis of length of service or continuous officiation on the post and the respondents No.3 to 5 and other persons like them have been wrongly placed senior to them. The petitioners have been appointed after they have been found eligible and meritorious by Selection Committee constituted for the purpose. Under the Resolution dated 3rd August 1981, the State Government changed the designation of qualified Compounders to those of Junior Pharmacists and certain directions were given for preparation of seniority list. This Resolution took notice of the fact that the scheme for imparting training to the unqualified Compounders came into force from July 1981 and unqualified Compounders have been deputed for training and the designation of Compounders was changed as Junior Pharmacists. This Resolution further reveals that the seniority of qualified Compounders should be combined with those of Junior Pharmacists and the seniority was required to be determined on the basis of total length of such qualified Compounders holding Diploma in Pharmacy. This Resolution also directed that those qualified Compounders who are registered as Pharmacists but not having Diploma should also be converted into those of Junior Pharmacists and it was directed in the Resolution that in the amalgamated cadre of Junior Pharmacists they were to be placed below the qualified Compounders having Diploma and the said Resolution further directed that the first seniority list of the amalgamated cadre should be

drawn as on the date of issue of Resolution. The seniority of future entries was to be fixed on the basis of date of entry in service on regular basis and in the case of unqualified Compounders the date of their successful completion of training was the date for the purpose of entry to the seniority list.

#. In reply to the Special Civil Application, in para 10 thereof, the respondents have admitted that there were three types of posts for Compounders/ in Pharmacists, for the Government hospitals and dispensaries, which are as under:

Types of Posts	Existing Pay Scales

1. Qualified Compounders as Rs.330-560 Jr.Pharmacist holding Diploma holders Diploma in Pharmacy to get starting pay of Rs.350/- in the grade.	
2. Qualified Compounders as Rs.330-560 registered Pharmacist but not holding Diploma in Pharmacy	
3. Unqualified Compounders Rs.260-400	

#. These posts of Compounders were redesignated as Junior Pharmacists. Two class of Compounders, i.e. those holding Diploma in Pharmacy and registered Pharmacist but not holding Diploma were placed in the category of qualified Compounders and they were given the pay scale of Rs.330-560. However, for the Diploma holders, it has been mentioned that they will get starting pay of Rs.350/- in the grade. The unqualified Compounders, meaning thereby, those Compounders who were neither holding Diploma in Pharmacy nor were registered Pharmacist were placed in the category of unqualified Compounders and the pay scale of Rs.260-400 has been prescribed. When both, the Compounders holding Diploma in Pharmacy and registered Pharmacist were treated as qualified Compounders, now Junior Pharmacists, I fail to see any justification to give the higher seniority to the Compounders/Junior Pharmacist holding Diploma in Pharmacy over the registered Junior Pharmacists who are registered as Pharmacists. This class of persons was treated to be qualified Compounders and they have been given pay scale

prescribed for qualified Compounders and as such, they should not have been treated to be inferior in service for the purpose of seniority in the cadre, to those Junior Pharmacists holding Diploma in Pharmacy. It is not in dispute that the petitioners were given the pay scale of Rs.330-560/-. The learned counsel for respondents is unable to show any Rule or judicial precedent that on the basis of the qualifications, a higher seniority can be given. The Diploma holders were given higher seniority only on the basis that they are holding Diploma which cannot be said to be the criteria germane to the well recognised principles of laying down seniority of Government servants. The post of qualified Compounders registered as Pharmacist having no Diploma were also converted into that of Junior Pharmacist and while giving them seniority in the amalgamated cadre of Junior Pharmacists, they have been placed en-block junior to junior Pharmacists plus qualified Compounders having Diploma in Pharmacy and converted Junior Pharmacist. This Resolution to this extent cannot be allowed to stand. Both the Compounders having Diploma in Pharmacy and those Compounders who are registered Pharmacists are treated to be qualified Compounders for all the purposes, by the Government itself and as such, while giving them seniority, no discrimination could have been made for this class of persons.

#. In the result, this Special Civil Application succeeds and the same is allowed. The Government Resolution dated 3rd August 1981, annexure 'A' to this petition, is quashed and set aside to the extent it affect the petitioners. It is hereby directed that the interse seniority in the amalgamated cadre of Junior Pharmacists or qualified Compounders having Diploma in Pharmacy and qualified Compounders registered as Pharmacists should be fixed in accordance with the total length of service and continuous officiation in the cadre. In consequence thereof, the seniority list dated 20th August 1982, is also set aside to the aforesaid extent with direction to prepare fresh seniority list in accordance with the aforesaid direction. Under the order dated August 21, 1982, annexure 'D', certain promotions have been made to the post of Senior Pharmacist, on temporary basis. These promotees shall continue on the post of Senior Pharmacist on temporary basis. After preparation of final selection list the case of the petitioners shall be considered for the post of Senior Pharmacist with reference to the date on which their juniors have been given promotion and they shall be entitled for notional benefits, if they are found suitable for promotion.

#. The Special Civil Application and Rule stands
disposed of in aforesaid terms with no order as to costs.

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